

**Executive Summary – Enforcement Matter – Case No. 45108**  
**Lehigh Cement Company LLC**  
**RN100218254**  
**Docket No. 2012-1983-AIR-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

AIR

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

Lehigh Cement Waco Plant, 100 Wickson Road, Waco, McLennan County

**Type of Operation:**

White portland cement manufacturing plant

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** February 8, 2013

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$7,613

**Amount Deferred for Expedited Settlement:** \$1,522

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$6,091

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Satisfactory

Site/RN - Satisfactory

**Major Source:** Yes

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2011

**Executive Summary – Enforcement Matter – Case No. 45108**  
**Lehigh Cement Company LLC**  
**RN100218254**  
**Docket No. 2012-1983-AIR-E**

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** July 6, 2012

**Date(s) of NOE(s):** August 29, 2012

***Violation Information***

1. Failed to submit notification of an excess opacity event within 24 hours of discovery. Specifically, the excess opacity event that began December 23, 2011, was not reported [30 TEX. ADMIN. CODE §§ 101.201(e) and 122.143(4), TEX. HEALTH & SAFETY CODE § 382.085(b), and Federal Operating Permit No. O1035, Special Terms & Conditions No. 2.F].

2. Failed to comply with the opacity limit of 20 percent averaged over a six minute period. Specifically, from December 23, 2011 at 8:00 p.m. to December 24, 2011 at 4:30 a.m., the opacity readings for the portland cement kiln, emission point number 39, ranged from 43.75 to 65.5 percent. The event occurred due to four broken bags [30 TEX. ADMIN. CODE §§ 111.111(a)(1)(B) and 122.143(4), TEX. HEALTH & SAFETY CODE § 382.085(b), and Federal Operating Permit No. O1035, Special Terms & Conditions No. 1.A].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

Respondent has implemented the following corrective measures:

- a. On August 3, 2012, provided additional oversight and training on opacity event reporting; and
- b. By October 4, 2012, implemented measures and procedures to ensure compliance with the allowable opacity limit.

**Technical Requirements:**

N/A

***Litigation Information***

**Date Petition(s) Filed:** N/A

**Date Answer(s) Filed:** N/A

**SOAH Referral Date:** N/A

**Executive Summary – Enforcement Matter – Case No. 45108**  
**Lehigh Cement Company LLC**  
**RN100218254**  
**Docket No. 2012-1983-AIR-E**

**Hearing Date(s):** N/A

**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Amancio R. Gutierrez, Enforcement Division,  
Enforcement Team 5, MC 149, (512) 239-3921; Debra Barber, Enforcement Division,  
MC 219, (512) 239-0412

**TCEQ SEP Coordinator:** N/A

**Respondent:** Thomas Del Vecchio, Plant Manager, Lehigh Cement Company LLC,  
P.O. Box 2576, Waco, Texas 76702

**Respondent's Attorney:** N/A





# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

<b>DATES</b>	<b>Assigned PCW</b>	4-Sep-2012	<b>Screening</b>	28-Sep-2012	<b>EPA Due</b>	
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## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Lehigh Cement Company LLC		
<b>Reg. Ent. Ref. No.</b>	RN100218254		
<b>Facility/Site Region</b>	9-Waco	<b>Major/Minor Source</b>	Major

## CASE INFORMATION

<b>Enf./Case ID No.</b>	45108	<b>No. of Violations</b>	2
<b>Docket No.</b>	2012-1983-AIR-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Air	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Amancio R. Gutierrez
		<b>EC's Team</b>	Enforcement Team 5
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$7,500
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## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	19.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$1,425
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Notes: Enhancement for one order with a denial of liability. Reduction for one notice of intent to conduct an audit.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$1,312
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts: \$100  
Approx. Cost of Compliance: \$3,000

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$7,613
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	\$7,613
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$7,613
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$1,522
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	\$6,091
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Screening Date 28-Sep-2012

Docket No. 2012-1983-AIR-E

PCW

Respondent Lehigh Cement Company LLC

Policy Revision 3 (September 2011)

Case ID No. 45108

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100218254

Media [Statute] Air

Enf. Coordinator Amancio R. Gutierrez

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	1	-1%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 19%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for one order with a denial of liability. Reduction for one notice of intent to conduct an audit.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, &amp; 7) 19%

## &gt;&gt; Final Compliance History Adjustment

Final Adjustment Percentage \*capped at 100% 19%

Screening Date 28-Sep-2012

Docket No. 2012-1983-AIR-E

PCW

Respondent Lehigh Cement Company LLC

Policy Revision 3 (September 2011)

Case ID No. 45108

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100218254

Media [Statute] Air

Enf. Coordinator Amancio R. Gutierrez

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 101.201(e) and 122.143(4), Tex. Health & Safety Code § 382.085(b), and Federal Operating Permit No. O1035, Special Terms & Conditions No. 2.F

Violation Description Failed to submit notification of an excess opacity event within 24 hours of discovery. Specifically, the excess opacity event that began December 23, 2011, was not reported.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 15.0%

Matrix Notes

The Respondent failed to comply with 100% of the rule requirement.

Adjustment \$21,250

\$3,750

## Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$3,750

One single event is recommended.

## Good Faith Efforts to Comply

25.0% Reduction

\$937

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes The Respondent completed corrective measures on August 3, 2012, prior to the August 29, 2012 NOE date.

Violation Subtotal \$2,813

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$61

Violation Final Penalty Total \$3,526

This violation Final Assessed Penalty (adjusted for limits) \$3,526

# Economic Benefit Worksheet

**Respondent** Lehigh Cement Company LLC

**Case ID No.** 45108

**Reg. Ent. Reference No.** RN100218254

**Media** Air

**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$2,000	24-Dec-2011	3-Aug-2012	0.61	\$61	n/a	\$61
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated cost to provide additional oversight and training on opacity event reporting. The Date Required is the date the report was due and the Final Date is the date of compliance.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$2,000

**TOTAL**

\$61

Screening Date 28-Sep-2012

Docket No. 2012-1983-AIR-E

PCW

Respondent Lehigh Cement Company LLC

Policy Revision 3 (September 2011)

Case ID No. 45108

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100218254

Media [Statute] Air

Enf. Coordinator Amancio R. Gutierrez

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code §§ 111.111(a)(1)(B) and 122.143(4), Tex. Health & Safety Code § 382.085(b), and Federal Operating Permit No. O1035, Special Terms & Conditions No. 1.A

Violation Description

Failed to comply with the opacity limit of 20 percent averaged over a six minute period. Specifically, from December 23, 2011 at 8:00 p.m. to December 24, 2011 at 4:30 a.m., the opacity readings for the portland cement kiln, emission point number 39, ranged from 43.75 to 65.5 percent. The event occurred due to four broken bags.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 15.0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment has been exposed to an insignificant amount of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment \$21,250

\$3,750

## Violation Events

Number of Violation Events 1

2 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

One quarterly event is recommended.

## Good Faith Efforts to Comply

10.0% Reduction

\$375

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		X
N/A		(mark with x)

Notes

The Respondent completed corrective measures on October 4, 2012, prior to the settlement offer.

Violation Subtotal \$3,375

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$39

Violation Final Penalty Total \$4,088

This violation Final Assessed Penalty (adjusted for limits) \$4,088

# Economic Benefit Worksheet

**Respondent** Lehigh Cement Company LLC

**Case ID No.** 45108

**Reg. Ent. Reference No.** RN100218254

**Media** Air

**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	23-Dec-2011	4-Oct-2012	0.78	\$39	n/a	\$39

**Notes for DELAYED costs**

Estimated cost to implement measures and procedures to ensure compliance with the allowable opacity limit. The Date Required is the date the opacity event began and the Final Date is the date of compliance.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$1,000

**TOTAL**

\$39

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



## TCEQ Compliance History Report

**PENDING** Compliance History Report for CN602529042, RN100218254, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

<b>Customer, Respondent, or Owner/Operator:</b>	CN602529042, Lehigh Cement Company LLC	<b>Classification:</b>	SATISFACTORY	<b>Rating:</b>	26.90
<b>Regulated Entity:</b>	RN100218254, LEHIGH CEMENT WACO PLANT	<b>Classification:</b>	SATISFACTORY	<b>Rating:</b>	26.90
<b>Complexity Points:</b>	7	<b>Repeat Violator:</b>	NO		
<b>CH Group:</b>	10 - Cement and Concrete Product Manufacturing				
<b>Location:</b>	100 WICKSON RD WACO, TX 76712-8514, MCLENNAN COUNTY				
<b>TCEQ Region:</b>	REGION 09 - WACO				

### ID Number(s):

**AIR OPERATING PERMITS** ACCOUNT NUMBER MB0123F

**AIR NEW SOURCE PERMITS** AFS NUM 4830900005

**AIR NEW SOURCE PERMITS** PERMIT 49057

**AIR NEW SOURCE PERMITS** REGISTRATION 50092

**AIR NEW SOURCE PERMITS** REGISTRATION 70830

**AIR NEW SOURCE PERMITS** REGISTRATION 83329

**AIR NEW SOURCE PERMITS** REGISTRATION 87611

**INDUSTRIAL AND HAZARDOUS WASTE** EPA ID  
TXD035382746

**PETROLEUM STORAGE TANK REGISTRATION**  
REGISTRATION 53589

**USED OIL** REGISTRATION A85880

**AIR EMISSIONS INVENTORY** ACCOUNT NUMBER  
MB0123F

**AIR OPERATING PERMITS** PERMIT 1035

**AIR NEW SOURCE PERMITS** REGISTRATION 72008

**AIR NEW SOURCE PERMITS** PERMIT 9399

**AIR NEW SOURCE PERMITS** ACCOUNT NUMBER MB0123F

**AIR NEW SOURCE PERMITS** REGISTRATION 70901

**AIR NEW SOURCE PERMITS** REGISTRATION 83562

**AIR NEW SOURCE PERMITS** REGISTRATION 103476

**INDUSTRIAL AND HAZARDOUS WASTE** SOLID WASTE  
REGISTRATION # (SWR) 31659

**STORMWATER** PERMIT TXR05AH47

**USED OIL** EPA ID TXD035382746

**POLLUTION PREVENTION PLANNING** ID NUMBER  
P07241

**Compliance History Period:** September 01, 2007 to August 31, 2012      **Rating Year:** 2012      **Rating Date:** 09/01/2012

**Date Compliance History Report Prepared:** September 28, 2012

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** September 28, 2007 to September 28, 2012

### TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

**Name:** Amancio R. Gutierrez

**Phone:** (512) 239-3921

### Site and Owner/Operator History:

- |  |     |
|--|-----|
| 1) Has the site been in existence and/or operation for the full five year compliance period?       | YES |
| 2) Has there been a (known) change in ownership/operator of the site during the compliance period? | NO  |
| 3) If YES for #2, who is the current owner/operator?   | N/A |
| 4) If YES for #2, who was/were the prior owner(s)/operator(s)?                                     | N/A |
| 5) If YES, when did the change(s) in owner or operator occur?                                      | N/A |

### Components (Multimedia) for the Site Are Listed in Sections A - J

#### A. Final Orders, court judgments, and consent decrees:

- |   |   |   |
|---|---|---|
| 1 | Effective Date: 08/23/2009                            | ADMINORDER 2007-1345-AIR-E (1660 Order) |
|   | Classification: Moderate                              |   |
|   | Citation: 30 TAC Chapter 122, SubChapter B 122.145(2) |   |
|   | 30 TAC Chapter 122, SubChapter B 122.146(1)           |   |
|   | 5C THC Chapter 382, SubChapter D 382.085(b)           |   |

Description: Failed to submit annual compliance certifications and deviation reports, in violation of 30 TEX. ADMIN. CODE § 122.146(1) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 6, 2007.

Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter A 101.20(3)  
30 TAC Chapter 116, SubChapter B 116.115(c)  
30 TAC Chapter 122, SubChapter B 122.143(4)  
30 TAC Chapter 122, SubChapter B 122.145(1)(A)  
5C THSC Chapter 382 382.085(b)

Rqmt Prov Special Condition 13 PERMIT

Special Condition 7 OP

Description: Failed to submit CEMS excess emission reports. Specifically, the Respondent failed to submit excess emission reports for the seven semiannual reporting periods beginning May 10, 2004 and ending November 9, 2007, as documented during a record review conducted January 17, 2008

Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter A 101.20(1)  
40 CFR Chapter 60, SubChapter C, PT 60, SubPT F 60.64(b)(4)  
5C THSC Chapter 382 382.085(b)

Description: Failed to submit monthly visual opacity emissions readings. Specifically, the respondent failed to report opacity emissions for Unit 65, Unit 1012, and Unit F 62 for the 42 monthly reporting periods beginning May 10, 2004 and ending November 9, 2007, as documented during a record review conducted January 17, 2008

Classification: Moderate

Citation: 30 TAC Chapter 113, SubChapter C 113.690  
30 TAC Chapter 122, SubChapter B 122.143(4)  
40 CFR Chapter 63, SubChapter C, PT 63, SubPT LLL 63.1344(a)  
5C THSC Chapter 382 382.085(b)

Rqmt Prov Special Condition 1D OP

Description: Failed to comply with the exhaust gas temperature standard. Specifically, the Respondent exceeded the exhaust gas temperature standard for Unit 65, Unit 1012, and Unit F 62 for the period beginning May 10, 2004 and ending November 9, 2007, as documented during a record review conducted January 17, 2008

Classification: Moderate

Citation: 30 TAC Chapter 117, SubChapter E 117.3120(a)  
5C THSC Chapter 382 382.085(b)

Description: Failed to comply with NOx emission limits currently under a SIP. Specifically, the Respondent exceeded the NOx emission limits standard for the period beginning May 10, 2004 and ending November 9, 2007, as documented during a record review conducted January 17, 2008

Classification: Moderate

Citation: 30 TAC Chapter 117, SubChapter E 117.3120(c)  
5C THSC Chapter 382 382.085(b)

Description: Failed to submit SIP Annual Emission Reports. Specifically, the Respondent failed to submit SIP Annual Emission Reports for the 2005 and 2006 reporting periods, as documented during a record review conducted January 17, 2008.

## **B. Criminal convictions:**

N/A

## **C. Chronic excessive emissions events:**

N/A

## **D. The approval dates of investigations (CCEDS Inv. Track. No.):**

Item 1	October 04, 2007	(596854)
Item 2	December 04, 2007	(610802)
Item 3	January 23, 2008	(615283)
Item 4	January 25, 2008	(615620)
Item 5	February 01, 2008	(615586)
Item 6	February 13, 2008	(615856)
Item 7	August 15, 2008	(688908)
Item 8	September 02, 2008	(688912)
Item 9	January 26, 2009	(724680)
Item 10	February 06, 2009	(724486)
Item 11	February 20, 2009	(724464)
Item 12	April 09, 2009	(741551)
Item 13	October 21, 2009	(777584)

Item 14	March 15, 2010	(794252)
Item 15	August 08, 2011	(934816)
Item 16	May 23, 2012	(1002192)
Item 17	June 18, 2012	(1007351)

**E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):**

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

**F. Environmental audits:**

Notice of Intent Date: 06/23/2008 (686918)

No DOV Associated

**G. Type of environmental management systems (EMSs):**

N/A

**H. Voluntary on-site compliance assessment dates:**

N/A

**I. Participation in a voluntary pollution reduction program:**

N/A

**J. Early compliance:**

N/A

**Sites Outside of Texas:**

N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
LEHIGH CEMENT COMPANY  
LLC  
RN100218254**

**§        BEFORE THE  
§  
§        TEXAS COMMISSION ON  
§  
§  
§        ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2012-1983-AIR-E**

### **I. JURISDICTION AND STIPULATIONS**

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Lehigh Cement Company LLC ("Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a white portland cement manufacturing plant at 100 Wickson Road in Waco, McLennan County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about September 3, 2012.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Seven Thousand Six Hundred Thirteen Dollars (\$7,613) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Six Thousand Ninety-One Dollars

- (\$6,091) of the administrative penalty and One Thousand Five Hundred Twenty-Two Dollars (\$1,522) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
  8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
  9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Plant:
    - a. On August 3, 2012, provided additional oversight and training on opacity event reporting; and
    - b. By October 4, 2012, implemented measures and procedures to ensure compliance with the allowable opacity limit.
  10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
  11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
  12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As owner and operator of the Plant, the Respondent is alleged to have:

1. Failed to submit notification of an excess opacity event within 24 hours of discovery, in violation of 30 TEX. ADMIN. CODE §§ 101.201(e) and 122.143(4), TEX. HEALTH & SAFETY CODE § 382.085(b), and Federal Operating Permit No. O1035, Special Terms & Conditions No. 2.F, as documented during a record review conducted on July 6, 2012. Specifically, the excess opacity event that began December 23, 2011, was not reported.
2. Failed to comply with the opacity limit of 20 percent averaged over a six minute period, in violation of 30 TEX. ADMIN. CODE §§ 111.111(a)(1)(B) and 122.143(4), TEX. HEALTH & SAFETY CODE § 382.085(b), and Federal Operating Permit No. O1035, Special Terms & Conditions No. 1.A, as documented during a record review conducted on July 6, 2012.

Specifically, from December 23, 2011 at 8:00 p.m. to December 24, 2011 at 4:30 a.m., the opacity readings for the portland cement kiln, emission point number 39, ranged from 43.75 to 65.5 percent. The event occurred due to four broken bags.

### **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").

### **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Lehigh Cement Company LLC, Docket No. 2012-1983-AIR-E" to:

Financial Administration Division, Revenue Operations Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph

exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

Paula Morris  
For the Executive Director

2/22/13  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Thomas DeVecchio  
Signature

12/10/2012  
Date

THOMAS DEVECHIO  
Name (Printed or typed)  
Authorized Representative of  
Lehigh Cement Company LLC

Plant Manager  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.